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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Revision No. 3084 of 2006
Date of decision: 10.9.2007

Siri Krishan **...Petitioner**

Versus

Savitri and others **...Respondents**

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. Harkesh Manuja, Advocate for the petitioner.

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RAJESH BINDAL, J.

The challenge in the present petition is to an order passed by the Additional Civil Judge (Junior Division), Sonepat whereby application filed on April 12, 2005 by the petitioner under Order 9 Rule 7 of the Code of Civil Procedure (for short 'the Code") for setting aside the exparte order dated December 6, 1999 has been dismissed.

2. The petitioner claimed that he was never served with the notice. However, still even if for the argument sake it is admitted that there was service of summons on the petitioner, since it was not accompanied by copy of plaint, it cannot be deemed to be valid service in the eyes of law and the limitation for the purpose of filing the application for setting aside exparte order shall be from the date of knowledge. He got the knowledge of the present proceedings only on March 25, 2005 when he had gone to Tehsil to get clearance in the revenue record for obtaining a loan. It was then he came to know about the interim order of stay of alienation granted by the Court. Accordingly, immediately thereafter he moved the present application, which is not delayed and deserves to be accepted as the petitioner was not to gain anything by not appearing in the suit because the same pertains to the property, which was purchased by him vide sale deed executed in his favour by Sham Lal on January 12, 1999, which was sought

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to be challenged in the suit. He has referred to a judgment of this Court in **Karnail Singh Vs. Jagdish Kaur and others** 1999 (1) Civil Court Cases 173 (P&H) to submit that due service means service of summons along with the plaint and limitation for filing the application for setting aside of exparte decree starts from the date of knowledge of exparte decree.

3. Having heard learned counsel for the petitioner, I do not find any merit in the contention raised by him. A perusal of the summons annexed with the petition clearly show that the service on the petitioner was effected in the presence of chowkidar of the village, who had also put his signature as a witness. The summon is duly thumb marked by the petitioner, which he could not dispute when the application for setting aside the order was under consideration. Once it is established on record that petitioner had the knowledge of a suit filed against him, it was the abundant duty to have appeared before the Court on the date fixed and even if copy of the plaint was not served upon him by the process server along with plaint, the same could very well be obtained by him while appearing in the Court. As far as date of knowledge for filing the application for setting aside the exparte order is concerned, the date of knowledge of the suit is the date on which the summons were served upon the petitioner regarding the suit. The allegations regarding getting the knowledge from the record on March 25, 2005, are totally vague. Not only this even the story of non receipt of summons alongwith the plaint is made out before this Court as no such plea was raised before the Court below. The service in the present case was effected on the petitioner on November 25, 1999 for appearance on December 6, 1999. Accordingly, there was sufficient time for him to have appeared in the Court.

4. A perusal of order 9 Rule 7 of the Code shows that where the Court had adjourned the hearing of the suit exparte and defendants appear on or before such hearing and assigns good cause for his non appearance on the previous date, the Court can set aside the order proceeding exparte. Even in Order 9 Rule 13 of the Code, second proviso thereof, clearly provide that no Court shall set aside a decree passed exparte merely on the ground that there has been an irregularity in the service of summons, if it is

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satisfied that the defendant had notice of the date of hearing and had sufficient time to appear and answer the plaintiff's claim.

5. In the present case, it has been found by the trial court that summon of the case was duly served upon the petitioner well before the date of hearing and he had sufficient time to put in appearance on the date fixed. The technical plea, sought to be raised regarding non receipt of plaint along with summon, was never raised before the Court below.

6. Accordingly, I do not find any merit in the present petition l and the same is dismissed in limine.

September 10, 2007 **(Rajesh Bindal)**
Pka **Judge**